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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,571	12/28/1999	GILBERT WOLRICH	10559/128001	1159
20985	7590	03/16/2009		
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER ENGLAND, DAVID E	
			ART UNIT 2443	PAPER NUMBER
			NOTIFICATION DATE 03/16/2009	DELIVERY MODE ELECTRONIC

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GILBERT WOLRICH, DEBRA BERNSTEIN,  
MATTHEW J. ADILETTA, and WILLIAM WHEELER

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Appeal 2008-0479  
Application 09/473,571<sup>1</sup>  
Technology Center 2100

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Decided: <sup>2</sup> March 12, 2009

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Before JOSEPH L. DIXON, JEAN R. HOMERE, and  
CAROLYN D. THOMAS, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> Application filed December 28, 1999. The real party in interest is Intel Corporation.

<sup>2</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a final rejection of claims 1-40 mailed July 13, 2005, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

## A. INVENTION

Appellants invented a system, method, and computer readable medium for controlling parallel processor arrays. (Spec. 1.)

## B. ILLUSTRATIVE CLAIM

The appeal contains claims 1-40. Claims 1, 9, 18, 28, and 33 are independent claims. Claim 1 is illustrative:

1. A processor, comprising:

a module configured to collect status data from media access devices connected to a bus, the status data indicating readiness of the media access devices to participate in data transfers, the status data comprising data indicating whether a one of the media access devices has received packet data;

one or more processing engines to schedule transfers of packet data; and

a push engine to perform unsolicited transfers of the status data to the processing engines in response to the module collecting new status data.

## C. REFERENCES

The references relied upon by the Examiner in rejecting the claims on appeal are as follows:

Isfeld

US 5,592,622

Jan. 7, 1997

Cotton	US 5,623,489	Apr. 22, 1997
Gulledge	US 5,644,623	Jul. 1, 1997
Ebrahim	US 5,887,134	Mar. 23, 1999
Williams	US 6,144,669	Nov. 7, 2000
O'Loughlin	US 6,275,505 B1	Aug. 14, 2001
Vaidya	US 6,279,113 B1	Aug. 21, 2001
Chilton	US 6,418,488 B1	Jul. 9, 2002
Witkowski	US 6,430,626 B1	Aug. 6, 2002
Adler	US 6,552,826 B2	Apr. 22, 2003

#### D. REJECTIONS

The Examiner entered the following objections/rejections which are before us for review:

- (1) The drawings are objected to under 37 C.F.R. § 1.83(a);
- (2) Claims 3, 6-8, 10, 14, 21-23, 31, 39, and 40 are rejected under 35 U.S.C. § 112, second paragraph;
- (3) Claims 1-5, 7-11, 13, 14, 16, 17, and 33-40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Isfeld, Chilton, and Witkowski;
- (4) Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Isfeld, Chilton, Witkowski, and Williams;
- (5) Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Isfeld, Chilton, Witkowski, and Vaidya;
- (6) Claim 15 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Isfeld, Chilton, Vaidya, and Witkowski;
- (7) Claims 18, 19, 22, and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ebrahim, Gulledge, and Witkowski;
- (8) Claim 20 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ebrahim, Gulledge, Witkowski, and Vaidya;

(9) Claims 21 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ebrahim, Gulledge, Witkowski, and Isfeld;

(10) Claim 23 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ebrahim, Gulledge, Witkowski, and Cotton;

(11) Claims 24 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ebrahim, Gulledge, Witkowski, Vaidya, and Cotton;

(12) Claims 28-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Loughlin, Witkowski, and Isfeld;

(13) Claims 31 and 32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Isfeld, Chilton, Witkowski, and Adler.

## II. PROSECUTION HISTORY

Appellants appealed from the Final Rejection and filed an Amended Appeal Brief (App. Br.) on October 10, 2006. The Examiner mailed an Examiner's Answer (Ans.) on January 17, 2007. Appellants filed a Reply Brief (Reply Br.) on March 16, 2007.

## III. FINDINGS OF FACT

The following findings of fact (FF) are supported by a preponderance of the evidence.

### *Specification*

1. The Specification discloses that “[i]n an unsolicited data transfer, the destination device for the transfer does not request the transfer” (13:20-22).

2. The Specification discloses that “[t]he transfer of ready status data from the FBI [FIFO bus interface] 38 to destination processing engines 22a-

22f and scheduling threads proceeds without any request from the processing engines 22a-22f” (13: 22-25).

*Isfeld*

3. Isfeld discloses that “[i]n Fig. 6, IOP4 receives a packet, and sends it to IOP5. Note that the input card simply sends the message to the output card. The sender does not need to allocate buffers or get permission from the receiver” (col. 9, ll. 39-42).

*Gulledge*

4. Gulledge discloses that “in the case of the FQM system this data may be automatically transferred through a local area network” (col. 14, ll. 48-49).

*Witkowski*

5. Witkowski discloses that “[t]he RX MCB interface 530 asserts a signal RX\_PKT\_AVAIL\* to the MCB 404 when packet data is in one of the RX BUFs 520, 522 and ready for transfer to the memory 212” (col. 20, ll. 46-49).

#### IV. PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of prima facie obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants' Brief to show error in the proffered prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief has not been considered and are deemed to be waived. See 37 C.F.R. § 41.37(c)(1)(vii).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). See also *KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

## V. ANALYSIS

### *Drawing Objections*

The Examiner found that the drawings are objected to because the claimed “status data of multiple media access devices is stored in a single one of the at least one register of the interface” is not shown in the drawings (Ans. 5).

We respectfully point out that objections to the drawings are not appealable matters. Requirements made by the Examiner that are not subject to appeal are petitionable to the Director under 37 C.F.R. § 1.181(a)(1). Accordingly, we have no authority to decide the Examiner’s objections to the drawings.

### *§ 112 Rejections*

#### *Claims 3, 6-8, 10, 14, 21-23, and 31*

The Examiner found that claims 3, 6-8, 10, 14, 21-23, and 31 recite the limitation “the device” and that there is insufficient antecedent basis for this limitation in the claim (Ans. 6).

Appellants contend that none of these claims recite the term “device”, singular, as indicated by the Examiner but rather recite “devices”, plural, and the antecedent basis is provided by the “media access devices” of claim 1 and 9 (App. Br. 10). We agree with Appellants.

Firstly, it is unclear why the Examiner is focused on a singular term, i.e., device, that fails to be included in the claims. Secondly, the Federal Circuit has held that despite the absence of explicit antecedent basis, “If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite.” *Bose Corp. v. JBL, Inc.*, 274 F.3d 1354,



1359 (Fed. Cir. 2001). Moreover, the court has held that antecedent basis can be present by implication. *Slimfold Manufacturing Co., Inc. v. Kinkead Industries, Inc.*, 810 F.2d 1113, 1116 (Fed. Cir. 1987). *See, Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1370-71 (Fed. Cir. 2006) (discussing these cases with approval).

Here, the recitation in independent claims 1, 9, and 18 for “media access devices” provides adequate antecedent basis by implication for the recited “devices,” particularly since no other devices are recited. The Examiner’s stated concerns regarding two “sets” of devices, one being “media access devices” and the other being just “devices” (Ans. 34) are misplaced. We find that the scope of the claimed “devices” could be reasonably ascertained in this case. Therefore, the Examiner’s rejection for lack of antecedent basis is REVERSED.

#### *Claim 39*

Appellants contend that “the number of media access devices is at least one, but may be more. Claim 39 specifies that the number of media access devices is more than one” (App. Br. 10).

The Examiner found that claim 39 could be interpreted as “one media access device compris[ing] multiple media access devices” (Ans. 6). We agree with the Examiner.

The USPTO gives pending claims “their broadest reasonable interpretation consistent with the specification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). This broader claim construction standard is justified because, during

prosecution, the applicant has the opportunity to amend the claims, and the Federal Circuit has held that an applicant has the opportunity and the obligation to define his or her invention precisely during proceedings before the USPTO. *See In re Morris*, 127 F.3d 1048, 1056-57 (Fed. Cir. 1997) (35 U.S.C. 112, second paragraph places the burden of precise claim drafting on the applicant); *In re Zletz*, 893 F.2d 319, 322 (Fed. Cir. 1989) (manner of claim interpretation that is used by courts in litigation is not the manner of claim interpretation that is applicable during prosecution of a pending application before the USPTO).

This issue turns on whether the scope of claim 39 is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art. Specifically, we are concerned (1) that the “at least one media access device comprises multiple media access devices” element of claim 39 has more than one equally plausible claim constructions of differing scope, and (2) whether the hypothetical person has a sufficient basis upon which to select one construction over others.

Here, the Examiner has presented a plausible construction (Ans. 6) and Appellants have also presented a plausible construction (App. Br. 10). However, because the claimed “at least one media access device comprises multiple media access devices” element of claim 39 is amenable to at least two different claim constructions of different scope, we conclude that claim 39 is indefinite under 35 U.S.C. § 112, second paragraph.

*Claim 40*

The Examiner found that in Claim 40 “[i]t is unclear as to how the Applicant wants the status data stored in the register, (i.e., one copy in one register, multiple copies in one register, one copy in multiple register, etc.)” (Ans. 6). The Examiner further found that “it is unclear as to what is mean [sic] by a ‘single one of the at least one register’ . . . only one register or there is only a single status data stored” (Ans. 36).

Appellants contend that that they “do not understand the Examiner’s reference to ‘copies’” (App. Br. 11). Appellants further contend that “the language ‘at least one register’ includes one register or multiple register[s], and claim 40 merely seeks to delineate the situations in which only one register is used to store status data of media access.” (*Id.*) We agree with Appellants.

As noted *supra*, the Examiner questions how many copies are placed into how many registers. However, the term “copies” is not found in claim 40. Claim 40 merely requires that status data of multiple access devices be stored in a single one of the at least one register of the interface. Thus, we find the Examiner’s reference to “copies” is misplaced.

Furthermore, the Examiner tries to equate the claimed “single one of” phrase with both a “register” and with “status data.” We find that claim 40 clearly states “a single one of the at least one register” and does not also implicate a single status data as alleged by the Examiner. Thus, we cannot sustain the Examiner’s rejection of claim 40.

*Grouping of Claims under § 103 Rejections*

Initially, we note that the Examiner stated in the Answer that numerous grounds of rejections “are not under review on appeal because they have not been presented for review in the appellant’s brief” (Ans. 3). We disagree with this statement. Upon reviewing the record, we find that Appellants have merely grouped certain claims together rather than argue them separately. The groupings are as follows:

In the Brief, Appellants argue claims 1-17 and 28-32 as a group (App. Br. 6-8). For claims 2-17 and 28-32, Appellants repeat the same argument made for claim 1. We will, therefore, treat claims 2-17 and 28-32 as standing or falling with independent claim 1.

Appellants argue claims 33-40 as a group (App. Br. 8). For claims 34-40, Appellants repeat the same argument made for independent claim 33. We will, therefore, treat claims 34-40 as standing or falling with claim 33.

Appellants argue claims 18-27 as a group (App. Br. 8). For claims 19-27, Appellants repeat the same argument made for independent claim 18. We will, therefore, treat claims 19-27 as standing or falling with claim 18.

*See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

*Enablement Rejection*

We first consider the Examiner’s discussion concerning lack of enablement for Appellants’ invention (Ans. 29-30). Particularly, the Examiner found that “Appellant’s invention is not enabled to have the push

engine perform an unsolicited transfer for there needs to be a command sent to said push engine to let it know when to transmit the status information” (Ans. 29).

Appellants contend that the Examiner’s discussion in the Answer about lack of enablement is improper because the Examiner has neither entered a new rejection . . . nor has the Examiner ever rejected claim 1 or any other claim under 35 U.S.C. 112, first paragraph” (Reply Br. 1).

While we agree with Appellants that the Examiner did not prominently identify a new ground of rejection in the Answer, yet changed the basic thrust of the rejection by introducing an enablement issue for the first time, we find no evidence in the record whereby Appellants requested that such a designation be made. Particularly, if Appellants believe that the Examiner’s Answer contained a new ground of rejection not identified as such, Appellants should have filed a petition under 37 C.F.R. 1.181(a) within two months from the mailing of the Examiner’s Answer requesting that this ground of rejection set forth in the answer be designated as a new ground of rejection. However, any allegation that an examiner’s answer contains a new ground of rejection not identified as such is waived if not timely raised (i.e., by filing the petition within two months of the answer) by way of a petition under 37 C.F.R. 1.181(a).

However, Appellants did file a Reply Brief setting forth arguments to address the so-called new rejection in the Examiner’s Answer. Therefore, we will address this issue. We shall treat the Examiner’s discussion of an enablement problem as an alternative to meeting the claim limitations.

The Examiner found that “there is no teachings of the push engine, by itself, performing an unsolicited transfer nor is there any disclosure as to how the push engine could do an unsolicited transfer” (Ans. 30).

Appellants contend that “the push engine 62 sends status data to the processing engines in response to commands from the internal logic of FBI 38 (of which the push engine is apart of), but not in response to any command, request or signal from the processing engines 22a-f (e.g., the recipients of the status data)” (Reply Br. 2).

In essence the Examiner has not given any patentable weight to the claimed “unsolicited transfer” because the Examiner believes that such a feature is not enabled by Appellants’ Specification. We disagree with the Examiner.

The “enablement requirement is satisfied when one skilled in the art, after reading the specification, could practice the claimed invention without undue experimentation.” *AK Steel Corp. v. Sollac*, 344 F.3d 1234, 1244 (Fed. Cir. 2003) (citation omitted). Whether undue experimentation is required is a conclusion reached by weighing several underlying factual inquiries. *In re Wands*, 858 F.2d 731, 736 (Fed. Cir. 1988). A “specification need not disclose what is well known in the art.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463 (Fed. Cir. 1984). However, this “is merely a rule of supplementation, not a substitute for a basic enabling disclosure.” *Genentech, Inc. v. Novo Nordisk, A/S*, 108 F.3d 1361, 1366 (Fed. Cir. 1997). It means that the

omission of minor details does not cause a specification to fail to meet the enablement requirement. *Id.* It is the specification, not the knowledge of one skilled in the art, that must supply the novel aspects of an invention in order to constitute adequate enablement. *Id.*

In the present case, Appellants' Specification defines an "unsolicited data transfer" as a transfer where the destination device does not request the transfer (FF 1). Appellants' Specification goes on to state that the FBI 38, which includes a push engine (see Appellants' Fig. 2), transfer ready status data to destination processing engines without any request from the processing engines (FF 2). Thus, we find that Appellants' Specification clearly requires that an unsolicited data transfer includes of a FBI with a push engine providing ready status data to a destination device that does not provide a request for such data.

Therefore, we find that the aforementioned portions of the Specification provide sufficient basis for Appellants' interpretation of the manner of making an unsolicited data transfer as recited in independent claim 1. Given such interpretation, we conclude that an artisan, having read the Specification, would have reasonably been able to practice the claimed invention without undue experimentation.

We now consider the Examiner's rejection of the claims under 35 U.S.C. § 103(a).

#### *Claims 1-17 and 28-32*

The Examiner found that Isfeld's transfer of data using a command "flush" is substantially similar to the transfer command that is received at the push engine (Ans. 31).

Appellants contend that “Isfeld does not describe that OIP4 would push/perform [an] unsolicited transfer of MAC status data to OIP5, nor does the Examiner posit a motivation why one skill in the art would modify the OIPs to push MAC status data about [sic] receiving packet data to other IOPs” (App. Br. 6). Appellants further contend that “[n]or do[es] either Chilton or Wilkowski in any way describe or suggest pushing/performing an unsolicited transfer of such data” (*Id.*). We agree.

As noted *supra*, in the claimed invention a request is not being received from the destination device during the unsolicited data transfer. The transfer command that the Examiner cites from Appellants’ Specification does not come from the destination device, but from another device, i.e., from within the FBI unit itself. Thus, we find no inconsistencies in Appellants’ Specification as suggested by the Examiner. Furthermore, the Examiner has not shown and we do not readily find where Isfeld, Chilton and Witkowski (i.e., the only argued references) disclose unsolicited transfers in response to collecting new status data when a destination device does not request the transfer.

Isfeld merely discloses transferring packets from an input card to an output card without prior permission from a receiver (FF 3). However, the claimed invention requires unsolicited transfers of status data to processing engines in response to collecting new status data, and the Examiner has not established how this claimed feature reads on the transfer of packets in Isfeld. Instead, the Examiner merely refers to column 27 of Isfeld (Ans. 31) which discloses that “[b]uffers and status are moved into the rev and hrev



list buffers (RLB and HLB) by the flush to ibus function” (col. 27, ll. 63-64). However, Isfeld’s movement of status information appears to be in response to a flush to ibus function not from receiving new status information.

Thus, Appellants have shown that the Examiner erred in finding that the combination of cited references disclose that above noted disputed limitation. Therefore, we reverse the rejection of independent claim 1 and of claims 2-8, 9-17, and 28-32, which stand therewith under 35 U.S.C. § 103.

#### *Claims 18-27*

Appellants contend that the references do not provide or imply a motivation to “modify a cellular handset quality measuring scheme to collect historical statistics about MACs ‘to ready the packet for processing and/or transmission to other devices in the system’” (App. Br. 9-10).

The Examiner’s articulated motivation on page 33 of the Answer includes being able to assign a relative transmit priority to each port when packet data is available for transmission (Ans. 33).

We begin by noting that the reasoning given as support for the conclusion of obviousness can be based on “interrelated teachings of multiple patents, the effects of demands known to the design community or present in the marketplace, and the background knowledge possessed by a person having ordinary skill in the art.” *KSR*, 127 S. Ct. at 1740-41.

We note our reviewing court has recently reaffirmed that:

[A]n implicit motivation to combine exists not only when a suggestion may be gleaned from the prior art as a whole, but when the ‘improvement’ is technology-independent and the combination of references results in a product or process that is more desirable, for example because it is stronger, cheaper, cleaner, faster, lighter, smaller, more durable, or more efficient. Because the desire to

enhance commercial opportunities by improving a product or process is universal-and even common-sensical-we have held that there exists in these situations a motivation to combine prior art references even absent any hint of suggestion in the references themselves. In such situations, the proper question is whether the ordinary artisan possesses knowledge and skills rendering him *capable* of combining the prior art references.

*Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2007). *See also Leapfrog Enters., Inc. v. Fisher-Price Inc.*, 485 F.3d 1157, 1162 (holding it “obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost.”)

The Examiner found that Ebrahim discloses each of the claimed features but for an interface connected to collect ready status data and to automatically transfer ready status data (Ans. 14). As such, the Examiner relies upon Gulledge to teach an interface connected to the bus to collect data (Ans. 14) and further relies upon Witkowski to teach ready status data (Ans. 15). Thus, the Examiner has found actual teachings in the prior art and has provided a rationale for the combination (Ans. 33). In essence, Appellants do not dispute the actual teachings found but merely attack the rationale for making the combination/modification (App. Br. 8-10). Therefore, we adopt the Examiner’s findings and limit our discussion to whether the Examiner has articulated a reasonable rationale for making the combination.

We find that such teachings found by the Examiner reasonably suggest that the combination involves the predictable use of prior art elements according to their established functions. For example, the

Examiner has shown that Gullledge discloses automatically transferring data (FF 4) and that Witkowski discloses asserting a signal indicating that packet data has been received (FF 5). Further the Examiner has indicated that it would have been obvious to combine the references because it would be faster if the status was automatically transfer once the data was collected” (Ans. 14). Such a conclusion of obviousness, which is based on interrelated teachings of multiple patents, is appropriate. Accordingly, we find that the Examiner has provided sufficient motivation for combining the teachings of the references, and we will therefore sustain the obviousness rejection of claims 18-27.

*Claims 33-40*

Appellants contend that “Claim 33 recites ‘multiple multi-threaded engines’. . . the Examiner has not identified any aspect of the references providing this limitation.” (App.Br. 8).

The Examiner found that Appellants failed to comply with 37 C.F.R. 1.111(b) and “multiple multi-threaded engines” could be nothing more than processors (Ans. 31-32). We agree with the Examiner.

Although it appears that the Examiner did not provide a precise indication of where “multiple multi-threaded engines” were found in the cited references, we find that Appellants merely argue that the Examiner has not identified the above-noted limitations without providing any meaningful analysis that explains why the claimed matter is distinguishable over the applied art. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. *See* 37 C.F.R. § 41.37(c)(1)(vii). “It is not the function of [the U.S. Court of

Appeals for the Federal Circuit] to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." *In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991). Similarly, it is not the function of this Board to examine claims in greater detail than argued by an appellant, looking for distinctions over the prior art. We note that arguments which Appellants could have made but chose not to make in the original Brief have not been considered and are deemed to be waived.

Therefore, we do not find that Appellants have shown error in the Examiner's rejection of illustrative claim 33. Therefore, we affirm the rejection of independent claim 33 and of claims 34-40, which fall therewith.

## VI. CONCLUSIONS

We conclude the following:

- (1) The Drawing Objections are not appealable;
- (2) Appellants have shown that the Examiner erred in rejecting claims 3, 6-8, 10, 14, 21-23, 31, and 40 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph;
- (3) Appellants have *not* shown that the Examiner erred in rejecting claim 39 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph;
- (4) Appellants have shown that the Examiner erred in rejecting claims 1-17 and 28-32 under 35 U.S.C. § 103(a);
- (5) Appellants have *not* shown that the Examiner erred in rejecting claims 18-27 and 33-40 under 35 U.S.C. § 103(a); and
- (6) Appellants have shown that the Examiner erred in applying a new enablement rejection under 35 U.S.C. § 112.

## VII. DECISION

In view of the foregoing discussion,

(1) We reverse the Examiner's rejection of claims 3, 6-8, 10, 14, 21-23, 31, and 40 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph;

(2) We affirm the Examiner's rejection of claim 39 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph;

(3) We affirm the Examiner's rejection of claims 18-27 and 33-40 under 35 U.S.C. § 103(a);

(4) We reverse the Examiner's rejection of claims 1-17 and 28-32 under 35 U.S.C. § 103(a); and

(5) We reverse the Examiner's new rejection of the claims under 35 U.S.C. § 112 for lack of enablement.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

## AFFIRMED-IN-PART

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